

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/602,198 06/22/00 HABING

T 068757.P063C

EXAMINER

QM32/0706  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PL  
1420 FIFTH AVENUE  
SUITE 2800  
SEATTLW WA 98101-2347

HWANG, V

ART UNIT

PAPER NUMBER

3764

DATE MAILED:

07/06/01

5

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/602,198	T. Habing et al.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hwang Victor	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 April 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	20) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 1, the information under the heading RELATED APPLICATIONS should be updated; and on page 7, line 5, the angle is missing.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 2-9 and 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2 and 11, the recitation of "a fully outward position" and "a fully inward position" of the secondary arms is vague and indefinite because the specification does not disclose the meaning of such language. It is not clear what the limitations of fully inward and fully outward encompass. Presumably, "fully inward" and "fully outward" are merely the range of movement of the secondary arms about the secondary pivots.

Claims 3-9 and 12-14 depend from claims 2 or 11 and are likewise indefinite.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985);

*In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 2-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,080,091.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application merely remove the limitation that the secondary arms are not constrained to move within respective arcuate paths fixed relative to the main arm member. The invention defined in the claims of the application is an obvious variation of the invention defined in the claims of the patent.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 2 and 6-14 are rejected under 35 U.S.C. 102(b) as being anticipated by *Hecox et al.* (US Pat. 5,456,644). *Hecox et al.* discloses an exercise apparatus comprising a frame 123; a press arm 140 pivotally coupled to the frame; a source of exercise resistance; and a

means for coupling the resistance to the press arm. The press arm comprises a main member 142 depending from a main pivot and a pair of secondary arms 143, 144 are coupled to the main arm member at respective secondary pivots 145. Each of the secondary arms pivots both inwardly and outwardly about a respective secondary pivot from an at rest position located between a fully outward position and a fully inward position. Each secondary arm hangs downwardly while in the at rest position. The main arm member includes a transverse cross member 242 with the secondary pivots disposed at opposite ends of the transverse cross member. The secondary pivots have pivot axes that are parallel to each other and are orthogonal to the pivot axis of the main pivot. Each of the secondary arms have portions that extend at an oblique angle with respect to the respective secondary pivot axis. The at rest position can be the start position for a straight forward chest press. The secondary pivots can be inclined with respect to vertical.

7. Claims 2-5, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by *Habing* (US Pat. 5,417,633). *Habing* '633 discloses an exercise apparatus comprising a frame 30; a press arm 130 pivotally coupled to the frame; a source of exercise resistance and a means for coupling the resistance to the press arm. The press arm has a main arm member 130' depending from a main pivot on the frame and a pair of secondary arms 158 coupled to the main arm member at respective secondary pivots 154. Each of the secondary arms pivots both inwardly and outwardly about a respective one of the secondary pivots from an at rest position located between a fully outward position and a fully inward position. Each secondary arm hangs downwardly while in the at rest position. The source of exercise resistance

comprises a weight and is coupled by a cable to the press arm. At least one pulley is rotatably mounted on the main arm member.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Yount* (US Pat. 3,759,512) discloses an exercise machine having a press arm comprising a pair of secondary arms pivotal about respective secondary pivots and pivotal inwardly and outwardly with respect to an at rest position.

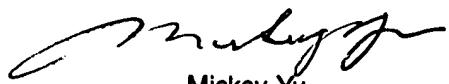
*Ish, III* (US Pat. 5,779,601) discloses an exercise machine and an embodiment of a press arm (Fig. 12) having a pair of secondary arms pivotal about respective secondary pivots and pivotal inwardly and outwardly with respect to an at rest position.

*Habing et al.* (US Pat. 5,803,882) discloses an exercise apparatus comprising a press arm having a pair of secondary arms pivotally coupled to pivot about a pair of secondary pivots.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865 and facsimile number is (703) 746-4891. The examiner can normally be reached Monday through Friday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for submitting formal papers to Technology Center 3700 is (703) 305-3579.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit 3764 Patent Analyst whose telephone number is (703) 305-2272.

  
Victor K. Hwang  
June 28, 2001

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700

## **Attachment for PTO-948 (Rev. 03/01, or earlier)**

**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

#### **2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

#### **Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.